

DOCKET FILE COPY ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Amendment of Parts 2 and 90 of the)
Commission's Rules to Provide for the)
Use of 200 Channels Outside the)
Designated Filing Area in the)
896-901 MHz and the 935-940 MHz Bands)
Allotted to the Specialized Mobile)
Radio Pool)
)
Implementation of Section 309(j))
of the Communications Act -)
Competitive Bidding)
)
Implementation of Sections 3(n) and 332)
of the Communications Act)
)

PR Docket No. 89-553

PP Docket No. 93-253

GN Docket No. 93-252

FEDERAL COMMUNICATIONS
COMMISSION
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SECRETARY

MAY 24 1995

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COMMENTS OF NEXTEL COMMUNICATIONS, INC.

NEXTEL COMMUNICATIONS, INC.

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Date: May 24, 1995

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COMMENTS OF NEXTEL COMMUNICATIONS, INC.

I. INTRODUCTION

Pursuant to Rule 1.415 of the Federal Communications Commission's ("Commission") Rules, Nextel Communications, Inc. ("Nextel") respectfully submits these Comments in response to the Second Further Notice Of Proposed Rule Making ("NPRM") in the above-captioned proceeding.^{1/} In the NPRM, the Commission sought comments on proposed rules for the auction of 10-channel blocks of 900 MHz Specialized Mobile Radio ("SMR") spectrum.

II. BACKGROUND

Nextel is one of the largest providers of SMR and wide-area enhanced SMR services in the Nation. Because Nextel provides these

^{1/} Second Report and Order and Second Further Notice Of Proposed Rule Making, PR Docket No. 89-553, FCC 95-159, released April 17, 1995.

services, using both 800 MHz SMR spectrum and 900 MHz SMR spectrum, Nextel is interested in participating in the proposed 900 MHz SMR license auctions.

The NPRM proposes to model the 900 MHz SMR auction rules on those used in the Personal Communications Services ("PCS") auctions, *i.e.*, simultaneous multiple round bidding, minimum bid increments, simultaneous stopping rules, Milgrom-Wilson activity rule, and others. The Commission should recognize, however, that there are differences between the 900 MHz SMR spectrum that is proposed for auction and the 2 GHz PCS spectrum in that there will be some existing SMR licensees on the 900 MHz spectrum.^{2/} This will affect the 900 MHz SMR auctions because the Commission does not propose to move these incumbents out of the 900 MHz SMR spectrum, making some MTAs more valuable than others depending on the extent of existing licensees in each. The 900 MHz SMR auctions also are different from the PCS auctions because there will be bidders in some MTAs who have already made a significant capital investment in that MTA and therefore have a vested interest in

^{2/} Although there are existing microwave licensees in the 2 GHz PCS allocation, these licensees are subject to mandatory migration. Thus, PCS auction winners will have contiguous, exclusive spectrum. A 900 MHz SMR MTA license winner will take the license subject to providing co-channel protection to any incumbent non-affiliated co-channel licensee. The 900 MHz SMR auctions can also be differentiated from the Commission's 800 MHz SMR auction proposal in that the 800 MHz SMR spectrum has a significantly greater presence of incumbents. The extent of existing licensees in the 800 MHz SMR spectrum is so great, in fact, that retuning of incumbents will be required to make contiguous spectrum possible. In the 900 MHz auctions, on the other hand, the number of incumbents is not sufficiently extensive to require mandatory retuning.

obtaining that MTA license. Other bidders may be incented, therefore, to participate in the auction for no other reason than to bid up the price that an incumbent would have to pay for an MTA license or to create a blocking position to the provision of wide-area SMR services.

III. DISCUSSION

A. Bidding Design and Bidding Issues

Due to the high degree of interdependence among the MTA licenses, the NPRM proposes the use of simultaneous multiple round bidding for all 51 MTAs.^{3/} Nextel supports the Commission's tentative conclusion because the opportunity to purchase a block of 900 MHz channels in all 51 MTAs or a combination of MTAs is essential to increase the ability of wide-area SMR operators to compete with other Commercial Mobile Radio Services ("CMRS") providers and to pursue differentiated business strategies.

Nextel supports the Commission's proposal to impose minimum bid increments, the Milgrom-Wilson activity rule, and a simultaneous stopping rule because each of these rules is essential to ensuring a fair and efficient auction. However, the upfront payment of $\$.02 \times \text{MHz} \times \text{total pops}$ to be bid upon in any single round may not be sufficient to discourage insincere bidders in the proposed 900 MHz SMR auctions. While an upfront payment using this formula may have been sufficient to discourage insincere PCS bidders who would have had to bid on up to 30 MHz blocks of spectrum, the 900 MHz auction of 10-channel blocks would require a

^{3/} NPRM at para. 75.

minimal upfront payment. This would not sufficiently discourage insincere speculators since the purchase of only a single, strategically located 10-channel block could have a significant impact on an existing 900 MHz SMR operator's system. Accordingly, the Commission should consider a larger upfront payment to discourage anti-competitive bidding activities.

B. Bid Withdrawal, Default and Disqualification

Another method by which the Commission can help to eliminate competitive bidding abuse would be to impose stricter penalties on bid withdrawal.^{4/} A party intent on bidding up the price of an MTA license, knowing that a particular incumbent has a vested interest therein and must obtain it, may place a bid in each round to raise the price. At some point, the incumbent will concede, the other bidder will withdraw its high bid, and the incumbent will be left to purchase the license at an artificially-inflated price.

If the withdrawing parties are subject only to the penalties imposed in the PCS auctions, the bidder will be subject to nothing more than paying the difference between the withdrawn bid and the next-highest bid.^{5/} The incumbent, however, will be forced to pay the price of its final bid -- one that has been intentionally

^{4/} As the Commission stated in its Narrowband PCS auction rules, "there will be a substantial penalty assessed if they withdraw a high bid, are found not to be qualified to hold licenses or are unable to pay a balance due." Third Report and Order, PP Docket No. 93-253, 9 FCC Rcd 2941, 2960 (1994).

^{5/} See Id. at 2691. In some cases, this could be as little as a few thousand dollars. This minor penalty would be worthwhile to the withdrawing bidder who managed to double or triple the price the incumbent might have otherwise paid.

and improperly driven higher than the actual value of the MTA license for anti-competitive purposes.

The solution is to impose a larger punitive penalty on applicants withdrawing their bids in such circumstances, such as forfeiture of the upfront payment. The potential for abuse in 900 MHz auctions requires that the Commission be cognizant of it and take appropriate preventative measures.

C. Designated Entities

Nextel supports the Commission's conclusions regarding the treatment of designated entities in the 900 MHz SMR auctions. The decision to not set aside a particular block for designated entity bidding is in the public interest in light of the incumbents already operating throughout MTAs on the 900 MHz SMR spectrum. Moreover, Nextel supports the Commission's decision to limit the designated entity provisions to small businesses, given the large percentage of minority-owned and women-owned small businesses that meet the "small business" criteria. These rules should fulfill Congress' intent to ensure participation by designated entities, while not unfairly limiting options for other potential bidders.

IV. CONCLUSION

Nextel supports the Commission's decision to auction 900 MHz SMR spectrum pursuant to the rules proposed in the NPRM. These proposed rules will provide a fair and efficient auction process which will enable participation by those parties seeking to provide 900 MHz SMR service. However, Nextel believes that the Commission should strengthen its upfront payment requirements as well as its

withdrawal and default penalties in order to deter speculation and anti-competitive behavior. Without stiffer penalties, insincere parties will have little disincentive to participate in the auction for anti-competitive purposes.

Respectfully submitted,

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Date: May 24, 1995

CERTIFICATE OF SERVICE

I, Rochelle L. Pearson, hereby certify that on this 24th day of May, 1995, I caused a copy of the attached Comments of Nextel Communications, Inc. to be served by hand delivery or first-class mail to the following:

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